UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA :

- v. - : 15 Cr. 100 (GHW)

SEAN MCCABE, :

Defendant. :

- -x

GOVERNMENT'S SENTENCING MEMORANDUM

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The Government submits this memorandum in connection with the sentencing of defendant Sean McCabe, which is scheduled for June 6, 2016 at 2:30 p.m. For the reasons set forth below, the Government respectfully submits that a sentence of imprisonment within the applicable Guidelines range of 46 to 57 months is appropriate, and that the defendant should be required to forfeit $40,000.

BACKGROUND

The defendant transported $160,000 in purported drug proceeds from Florida to Panama in furtherance of a money laundering scheme in which he and co-defendants Halim Cristo-Fares and Tirso Dominguez participated. Specifically, after Cristo-Fares negotiated terms for a $200,000 money laundering "test run" with confidential sources acting at the direction of the DEA ("CS-1" and "CS-2"), Dominguez introduced CS-1 to McCabe. (May 13, 2016 Presentence Investigation Report ("PSR") ¶¶ 14-15). On May 16, 2014, McCabe met CS-1 in Florida. CS-1 told McCabe that he would be transporting the proceeds of a cocaine shipment that was distributed in Chicago, and McCabe agreed to bring the funds to Panama on a commercial flight. (*Id.* ¶ 16). McCabe described previous experience in drug-trafficking to CS-1, said that he wanted to participate in drug transactions with CS-1, and expressed interest in larger money laundering transactions—in the multi-million dollar range—using private aircraft to transport the funds. (*See id.* ¶ 17).

On June 5, 2014, CS-1 delivered approximately $200,000 in purported drug proceeds to McCabe inside a hotel room in Florida. (*Id.* ¶ 18). Set forth below is a photograph from video of the meeting, which shows McCabe counting the cash:

06/05/2014 19:36:55
CH3

During the meeting, McCabe said that he was used to transporting larger amounts of cash, and that he would be able to use his background as a professional poker player as a cover story if questioned by customs officials. CS-1 asked whether McCabe could also assist with sending money to Europe, and McCabe suggested that they do so by purchasing and transporting gold. McCabe also asked if it would be possible to obtain approximately 10 kilograms of cocaine from the CSes on consignment so that he could sell the drugs in an effort to establish a Florida-based distribution network.

On June 6, 2014, McCabe later traveled to Panama, and he delivered the $160,000 to individuals acting at the direction of law enforcement. (*Id.* ¶ 18). Of the remaining $40,000, McCabe kept approximately $13,000, and delivered approximately $27,000 to Dominguez. (*See* Def. Mem. at 6). McCabe described a similar division of the proceeds to CS-1 during a meeting on July 9, 2014. (PSR ¶ 19).

During electronic communications with CS-1 in late-August and early-September 2014, McCabe expressed interest in additional money laundering and weapons trafficking transactions, and he tried to cut his co-defendants out of the conspiracy so that he could interact with the CSes directly. For example, on August 19, 2014, McCabe exchanged the following messages with CS-1 regarding a potential weapons transaction with Cristo-Fares:

CS-1	I will give 500 [in currency] to take to Colombia.
* * *	
CS-1	And he [Cristo-Fares] will bring a catalog to buy some weapons.
McCabe	Small arms?
CS-1	Both
McCabe	I know he has the ability
CS-1	The factory is [in] Venezuela. He told he already talk [with] the people there. And he [has] the catalog.
CS-1	And the prices
McCabe	I'm aware of the factory and what they produce. So the only thing you are waiting for is the catalog?
CS-1	Basically it was a done deal
McCabe	And then what? He disappeared again?
CS-1	Well he said to give you the 500 and he will came up whit the catalog. But I was waiting there [because] he was suppose[d] to tell me w[h]ere he wants the money or [P]anama or Colombia or [t]here whit you.
* * *	
McCabe	I was told that I was to hold anything above 500 here for him
CS-1	Well in total was 2 big ones.
McCabe	Why didn't you tell me this while you were still here? I could have done more to get it done
McCabe	Yes, my other friend told me.. I just wasn't sure where it was all going, so I was told to move 500 and wait in the rest
McCabe	Wait on the rest *

McCabe then urged CS-1 to move more quickly so that he could engage in other criminal conduct involving separate co-conspirators and "another deal":

McCabe	. . . There is another deal in Europe that I need to move money for
McCabe	In a couple months
CS-1	Ohh ok.
McCabe	I can go to Caracas if he's [Cristo Fares] not coming here and

	get this rolling again
* * *	
McCabe	But I have been waiting (not your fault - his fault) for over a month to go to [Colombia]
McCabe	I need to make this trip ASAP. Then I can go see him, wherever he is

Similarly, the following day, McCabe complained that he could not "wait much longer":

CS-1	You have prove your self.
McCabe	I know his priority is getting that transaction done... But there is other business to take care of
McCabe	For example, moving the 500
CS-1	I promise will have a solution for this this week.
McCabe	Ok. I will wait until Wednesday. I am not happy about it, but if that's the way it needs to be..
McCabe	As for my Eastern European friends, I will need to know what is on the shopping list. It will take some time.
McCabe	Also, I have other contacts in VZ
McCabe	But, first we need to be working.. Ok?
McCabe	I can't wait much longer before I will be forced to go do something else

On September 3, 2014, McCabe wrote to CS-1 regarding interactions between Cristo-Fares and Dominguez:

McCabe	So Halim told Tito to tell me to contact every person I could think of to find you, and tell you to contact your boss immediately because no body knows where you are
McCabe	Complete bullshit, I know
McCabe	I couldn't tell him we are in contact because we need to know what he's doing
* * *	
McCabe	I'm going to try to get Halim to call you. I won't tell them that I have any details
CS-1	Ok.
McCabe	I made the call to my friend [Dominguez]. He's trying to get a hold of Halim to tell him to call. I'll update you when he calls me back
McCabe	Ok - he [Dominguez] got a hold of him [Cristo-Fares]. He denies that he left you and your boss waiting here, but that's not what's important right now.. He said he would call you soon

McCabe was arrested in Florida on December 2, 2014. A search incident to arrest revealed a handgun magazine in his pocket. Agents approached the individual who drove McCabe to the area of the arrest ("Male-1"), who disclosed that McCabe's firearm was stored in the glove box. The agents seized a loaded Springfield XD5 pistol from the vehicle[1]:

Following McCabe's arrest, he waived his *Miranda* rights and told the agents the following, in substance and in part:

- McCabe agreed to assist Dominguez and a friend of Dominguez (referring to Cristo-Fares) by meeting CS-1 and later delivering approximately $200,000 that represented the proceeds of the distribution of narcotics in Chicago.

- McCabe picked up the money from CS-1 and another male. McCabe then provided $40,000 in a sealed envelope to Male-1, and instructed Male-1 to deliver the envelope to Dominguez.

- The next day, McCabe traveled to Panama with the cash concealed in his carry-on luggage. McCabe expected to make $15,000 for his role in the transaction, less expenses for the trip to Panama.

- On the day of his arrest, McCabe expected to pick up several million dollars from CS-1 or an associate of CS-1, which he understood would be transported to Panama. Cristo-Fares asked McCabe to locate a sport fishing boat to transport the bulk currency out of the United States. McCabe had conducted preliminary research

[1] This photograph shows the firearm post-seizure, not as it was initially stored in the vehicle by McCabe and Male-1.

regarding the purchase of such a vessel, which he sent to Dominguez, and McCabe planned to hold the funds until Cristo-Fares provided further instructions.

- McCabe brought a firearm to the anticipated money pickup "just in case something happened."

- McCabe understood that Cristo-Fares and CS-1 were negotiating a weapons deal.

- McCabe was seeking to get involved in the drug trade by locating customers for CS-1 in Florida.

THE CHARGE AND GUILTY PLEA

McCabe was initially charged by Complaint with participating in a money laundering conspiracy, in violation of Title 18, United States Code, Section 1956(h). After arriving in this District, he waived indictment and was arraigned on an Information with the same charge. (PSR ¶ 1). On August 17, 2015, McCabe pleaded guilty to the charge in the Information pursuant to a plea agreement, which included a stipulated Guidelines range of 57 to 71 months' imprisonment based on a total offense level of 25 and Criminal History Category I.

THE SENTENCING GUIDELINES

In the PSR, the Probation Office applied the Guidelines in a manner consistent with the Court's rulings at the sentencing of Cristo-Fares,[2] calculating a total offense level of 23 as follows:

- Pursuant to U.S.S.G. § 2S1.1(a)(2), the base offense level is eight, plus the number of offense levels from the table in U.S.S.G. § 2B1.1 corresponding to the value of the laundered funds. Pursuant to U.S.S.G. § 2B1.1(b)(1)(F), because the value of the laundered funds was $200,000, 10 levels are added. Accordingly, pursuant to U.S.S.G. § 2S1.1(a)(2), the base offense level is 18. (PSR ¶ 30).

- Pursuant to U.S.S.G. § 2S1.1(b)(1)—because (i) 2S1.1(a)(2) applies; and (ii) the defendant knew or believed that the laundered funds were the proceeds of, or were

[2] Specifically, at the sentencing of Cristo-Fares, the Court declined to apply the two-level enhancement for sophisticated money laundering pursuant to U.S.S.G. § 2S1.1(b)(3). (Apr. 13, 2016 Tr. at 16-17).

intended to promote, an offense involving the manufacture, importation, or distribution of a controlled substance or a listed chemical—six levels are added. (PSR ¶ 31).

- Pursuant to U.S.S.G. § 2S1.1(b)(2)(B), because the defendant has been convicted under 18 U.S.C. § 1956, two levels are added. (PSR ¶ 32).

- Pursuant to U.S.S.G. § 3E1.1, based on the defendant's acceptance of responsibility, three levels are subtracted. (PSR ¶¶ 38-39).

Therefore, applying the Court's prior ruling and Criminal History Category I, the applicable Guidelines range is 46 to 57 months' imprisonment.

DISCUSSION

The Government respectfully submits that the balancing of the statutory sentencing factors set forth at Title 18, United States Code, Section 3553 supports the imposition of a within-Guidelines sentence and forfeiture in the amount of $40,000 (representing the proceeds of the offense).

First, like Cristo-Fares, McCabe demonstrated "a willingness to undertake very serious criminal activities, and more importantly, did so." (Apr. 13, 2016 Tr. at 35). Specifically, the defendant picked up purported drug proceeds in Florida, counted them carefully in a hotel room, sent the co-conspirators' cut of the deal to Dominguez for safekeeping via Male-1, and then transported the rest of the cash to Panama. Although counsel has said much about the merits of professional poker and commodities trading (*see* Def. Mem. at 13-15), McCabe described his experience with both to CS-1 as potentially providing cover(s) for money laundering. And during this course of conduct, the defendant also said that he wanted to commence actual drug-trafficking activities with CS-1.

Second, McCabe's actions and communications with CS-1 demonstrate that he sought to continue to engage in crimes following his delivery of purported drug proceeds to Panama, including brokering weapons deals for CS-1, whom he believed was a drug trafficker.

Thus, while defense counsel may be correct that McCabe did not commit "new/other crime(s)" between June 2014 and his arrest on December 2, 2014 (Def. Mem. at 6), it was not for lack of trying. McCabe told CS-1 in September 2014 that he had "other business to take care of" and "another deal in Europe that I need to move money for . . . [i]n a couple months." He offered to broker weapons transactions between CS-1 (requesting a "shopping list") and his "Eastern European friends" and "other contacts" besides Cristo-Fares in Venezuela. The defendant also admitted following his arrest that he expected to pick up several million dollars in drug proceeds on the day he was taken into custody, and that he brought a weapon to the meeting for security. (*See* Apr. 13, 2016 Tr. at 35 (finding as an aggravating consideration Cristo-Fares' "expressions of willingness to transfer millions of dollars illegally")).

Third, the circumstances giving rise to a federal regulatory action related to the defendant's 2012 arrest in Florida, which he failed to disclose to the Probation Office or the Court in his sentencing submission, reflect a heightened risk of recidivism. (PSR ¶¶ 44-45; *see also id.* at 26 (observing that McCabe "appears to pose a moderate risk of recidivism")). In August 2012, McCabe was arrested—and subsequently convicted on two state-law felony counts—related to his knowingly conducting an unlawful telemarketing operation at "World Precious Metals Exchange, Inc." (*Id.* ¶¶ 44-45). McCabe told the Probation Office that he "oversaw up to eight independent contractors who worked at the store and as telemarketers" who solicited "investments in gold." (*Id.* ¶ 89; *see also* Def. Mem. at 15). Absent from the PSR or the defense submission, however, is any reference to a September 2014 Order from the U.S. Commodity Futures Trading Commission ("CFTC") that required McCabe and "WorldPMX, Inc." to pay a $140,000 civil monetary penalty and $1,048,807 in restitution for violations of the Commodity Exchange Act. (*See* Ex. A (CFTC Press Release and Order)).[3]

In his sentencing submission, the defendant appropriately characterized "[d]ealing in precious metals" as "akin to dealing commodities . . . ." (Def. Mem. at 15). He also observed that the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act prohibited leveraged transactions in this area. But the CFTC found that McCabe did just that between "at least March 2012 to February 2013." (Ex. A, CFTC Order at 3 § III.D). The CFTC described McCabe's scheme as follows:

> To purchase a certain quantity of metal, customers needed to deposit only a percentage of the total metal value, as little as 20%. According to WorldPMX's customer agreements, the customer would receive a loan for the remainder of the metal's value. WorldPMX charged retail customers interest on the loan, approximately 4.5% above prime, as well as a service charge which was paid to AmeriFirst. WorldPMX's customers also paid WorldPMX a commission of up to 15% of the total metal value and paid AmeriFirst a mark-up on the spot price of the metal, typically 3%. *Due to these high fees, finance charges, and commissions, WorldPMX's customers never even broke even on their investments, and never earned a profit, because much of their principal investments were consumed by the charges.*
>
> [. . .]
>
> WorldPMX claimed that AmeriFirst was the source of metals underlying the transactions, but in fact AmeriFirst never sold, possessed, owned, or held title to any precious metals in connection with the leveraged, margined, or financed precious metals transactions offered to WorldPMX's customers

(*Id.* at 3-4 § III.D (emphasis added)). WorldPMX "solicited and accepted a total of at least $2.4 million from nineteen customers to finance precious metals transactions," as a result of which it collected $927,154 in commissions and $121,653 in fees. (*Id.*). The CFTC described the victims as, "[g]enerally, . . . unsophisticated individual investors." (*Id.* at 5 § IV.B). As to McCabe, the CFTC found that he "controlled WorldPMX and knowingly induced WorldPMX's conduct . . . and

[3] The Government did not bring the CFTC action to the attention of the Probation Office until May 26, 2016. The Probation Office confirmed, however, that neither McCabe nor defense counsel disclosed the CFTC action.

did not act in good faith." (*Id.* at 7 § IV.F (emphasis added); *see also id.* at 8 ("McCabe was the ultimate decision-maker and controlled all aspects of WorldPMX's business. McCabe had both general control over WorldPMX and specific control over the conduct underlying WorldPMX's violations.")). Finally, although McCabe claims in his submission that he "walked away from this business venture" (Def. Mem. at 15), the CFTC imposed permanent registration and trading bans on McCabe and WorldPMX.

The CFTC's findings regarding McCabe's conduct, as well as his failure to disclose this information to the Probation Office or the Court, call into serious question his claim that he is a "rescuer" and the "kind of man who will go out of his way to help others." (Def. Mem. at 16). Rather, his offense conduct in this case and his scheme at WorldPMX illustrate that he prioritizes personal financial gain over the wellbeing of others. (*See id.* at 1 ("McCabe committed this crime for money.")). Thus, specific deterrence is a critical feature of this sentencing. So too is general deterrence, as the Probation Office explained in the PSR:

> [M]oney laundering is one of the primary, if not the most important, vehicle that enables individuals and organizations to continue and flourish in their particular criminal conduct. As such, we believe that imprisonment is the most effective deterrence against those seeking to profit from money laundering activities.

(PSR at 26). Accordingly, the Government respectfully submits that a within-Guidelines sentence is appropriate in order to achieve specific and general deterrence, as well as to reflect the seriousness of the offense and to promote respect for the law.

CONCLUSION

For the foregoing reasons, the Government respectfully submits that a sentence within the applicable Guidelines range of 46 to 57 months' imprisonment would be sufficient but not greater than necessary to comply with the purposes of sentencing. The Government also requests that the Court order the defendant to forfeit $40,000, pursuant to the proposed order of forfeiture that is attached as Exhibit B.

Dated: New York, New York
May 27, 2016

Respectfully submitted,

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